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December 13, 2005

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

15337



Re: Finance Docket No. 34776, National Solid Wastes Management Association, et al, Petition for a Declaratory Order

Dear Secretary Williams:

In their petition for a declaratory order, the National Solid Wastes Management Association ("NSWMA") and other petitioners in the above-referenced proceeding (hereinafter collectively referred to as "Petitioners") have requested the Board to carve out an exception to the Board's broad jurisdiction over the transportation of commodities by rail. The Petitioners would have the Board exclude from its jurisdiction the transportation of waste products. In fact, no traffic is more suited to long-distance rail carriage than the transportation of waste products.

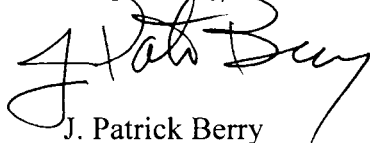
New England Transrail, LLC ("NET") respectfully opposes the Petition for a Declaratory Order on its merits. Just because some of the activities conducted by rail carriers are similar to activities conducted by NSWMA's members at their state licensed truck-to-truck facilities does not mean that they are not necessary or integral to a rail carrier's operations. To the contrary, actions taken by a rail carrier to handle cargo more safely and efficiently must be viewed as part of rail transportation that is regulated by the Board.

NET also opposes the Petition for a Declaratory Order on procedural grounds. The scope of the Board's jurisdiction has been developed over the years through individual case-by-case determinations. In the Board's own words, "Whether a particular activity constitutes transportation by rail carrier under Section 10501(b) is a case-by-case and fact specific determination." Hi Tech Trans, LLC--Petition for Declaratory Order--Newark, New Jersey, STB Finance Docket No. 34192 (Sub-No. 1), 2003 WL 21952136 (STB) (STB served August 14, 2003). The Board's practice of making decisions on a case-by-case has served the Board and its regulated community well and should not be abandoned in favor of a declaratory order proceeding.

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For these reasons, and the further reason that the Petition for a Declaratory Order seems designed to circumvent a case currently pending before the United States District Court of New Jersey, NET respectfully submits that the Petitioners' request for the institution of a declaratory order proceeding be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Patrick Berry". The signature is fluid and cursive, with the first name "J." and last name "Berry" clearly distinguishable.

J. Patrick Berry
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Transrail, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 2005, a copy of the foregoing was served on the following persons by first-class mail:

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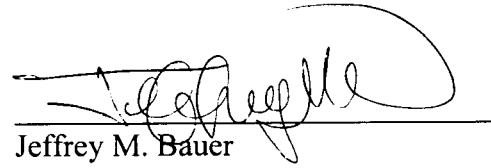
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